Reopening of Medical Benefits Closed by Operation of Law

24.29. 3101 INTRODUCTION - APPLICABILITY - VOLUNTARY PAYMENTS

(1) This subchapter addresses the reopening of medical benefits terminated by operation of law for certain claims that occurred on or after July 1, 2011.

(2) This subchapter does not apply to claims to which any of the following circumstances apply:

(a) arising before July 1, 2011;

(b) in which the medical benefits have expressly been settled by means of a department or Workers' Compensation Court approved settlement or judgment;

(c) in which the insurer did not accept liability for the underlying injury or occupational disease, or only accepted liability subject to a reservation of rights; or

(d) arising on or after July 1, 2011, where the injury or occupational disease results in:

(i) permanent total disability; or

(ii) the fitting of a prosthesis which may need to be repaired or replaced.

(3) The department will apply the provisions of this subchapter to claims accepted by the uninsured employers' fund.

(4) Informational instructions regarding the process for a party to petition to reopen medical benefits terminated by operation of law are available from the Department of Labor and Industry, Employment Relations Division, P.O. Box 8011, Helena, MT 59604-8011, and online at the department's web site. These instructions provide supplemental information about the reopening process and an explanation of how to submit a petition for reopening to the department.

(5) Nothing in this subchapter prohibits an insurer from making voluntary payments for medical benefits that have terminated by operation of law. An insurer that makes a voluntary payment for a medical benefit that has been terminated by operation of law must advise the worker in writing that the payment for a medical benefit is made on a voluntary basis and does not create a legal obligation for the insurer to make payment for any other medical benefits.

AUTH: 39-71-203, MCA
IMP: 39-71-105, 39-71-107, 39-71-704, 39-71-717, MCA

Rule 24.29.3102 reserved

24.29.3103 DEFINITIONS Terms defined in 39-71-116, MCA, are used in this subchapter as they are defined by statute. As used in this subchapter the following definitions apply unless the context clearly indicates otherwise:

(1) "Accepted" means the petition has been evaluated by the department and was found to be eligible to be considered for medical review.

(2) "Additional information" means information other than a medical record, supplied by a worker or an insurer, and tendered as being relevant to the reopening of medical benefits.

(3) "Approved" means that after the medical review has been performed, medical benefits are reopened, as specified in the medical director's report.

(4) "Denied" means that after the medical review has been performed, medical benefits are not reopened.

(5) "Department" means the Department of Labor and Industry.

(6) "Dismissed" means the petition has been evaluated by the department and was found to be ineligible to be considered for medical review.

(7) "Filed" means the status of a petition once it has been accepted by the department for medical review.

(8) "Joint petition" means a petition for reopening that has been signed by both the worker and the insurer, with agreed-to terms concerning the reopening of medical benefits.

(9) "Medical records" means documents related to the medical condition of the worker, and includes but is not limited to, notes, reports, and letters prepared by health care providers. The term does not include medical billing materials.

(10) "Medical review panel" means the department's medical director and two additional physicians selected from a pool of available physicians, who can review a petition for the reopening of medical benefits, as provided for in 39-71-717, MCA.

(11) "Periodic review" means the every-two-years consideration by the medical review panel or the medical director as to whether the recommendations previously made should be continued or changed.

(12) "Petition" means the department-provided form upon which a party requests that medical benefits which have been terminated by the operation of 39-71-704, MCA, be reopened.

(13) "Physician" means a health care provider who takes part in a medical review panel under this subchapter. A physician must be licensed in Montana in one or more of the following categories:

(a) medical doctor;

(b) osteopath;

(c) dentist;

(d) chiropractor;

(e) physician assistant; or

(f) advanced practice registered nurse.

(14) "Received " means a petition which has been delivered to the department, but has not yet been accepted and filed by the department.

(15) "Reopened" means medical benefits which had terminated by operation of law, and which are now to be furnished by the insurer as recommended by the medical report.

(16) "Report" means the written recommendations of the medical director or medical review panel concerning whether or not medical benefits should be reopened, and if reopened, to what extent those benefits should be furnished.

(17) "Returned" means the petition has been evaluated by the department and has been found to be incomplete.

(18) "Submission," as used in 39-71-717(8), MCA, means the same as being filed with the department.

(19) "Submit," as used in 39-71-717(6), MCA, means to deliver medical records or additional information to the department.

(20) "Work" means supplying labor or services for remuneration, although not necessarily in employment by another.

(21) "Worker" means the individual who suffered the workplace injury or occupational disease upon which basis a claim for benefits was made to the insurer.

(22) "Year" means 12 calendar months.

AUTH: 39-71-203, MCA
IMP: 39-71-116, 39-71-717, MCA

Rules 24.29.3104 through 24.31.06 reserved

24.29.3107 TIMELINES AND EXPLANATION OF STATUS CLASSIFICATIONS OF A PETITION (1) The time in which a petition can be delivered to the department and considered filed is the period 90 days prior to the termination of medical benefits through the ten-year anniversary of the date of the injury.

(2) A petition which has been delivered to the department undergoes a preliminary evaluation to determine which of following three initial status conditions is appropriate:

(a) the petition is accepted if it is eligible for medical review;

(b) the petition is dismissed if it is ineligible for medical review because:

(i) the petition concerns a claim that is not subject to the medical benefits reopening process; or

(ii) the petition concerns a claim for which a previous petition has been accepted; or

(c) the petition is returned if it is eligible for medical review, but the petition form is incomplete.

(3) Upon a petition being accepted, it is considered filed with the department. A petition that is dismissed or returned is considered not to have been filed with the department.

(4) The 60-day period for medical review to occur and the medical director to issue a report begins on the date the petition is considered filed.

(5) Once filed, the parties have 14 days to submit medical records and additional information to be considered during the medical review. Once the medical review is completed and the report is issued by the medical director, the petition will have one of the two following status conditions:

(a) the petition is approved, with a recommendation in the report as to the nature and extent of the medical benefits that should be provided by the insurer; or

(b) the petition is denied, with a recommendation in the report that no further medical benefits should be provided by the insurer.

(6) Unless the insurer timely notifies the department to the contrary, the department will presume that the petition relates to a claim which the insurer acknowledges is compensable. An insurer may dispute that presumption in writing by delivering to the department and the petitioner notice of the dispute regarding compensability within 14 days of the department's acceptance of the petition.

(a) Upon receiving the insurer's notice disputing compensability of the claim, the acceptance of the petition is suspended until:

(i) the compensability dispute is resolved by agreement of the parties;

(ii) the compensability dispute is resolved by the final judgment of the courts; or

(iii) the time in which to bring the compensability dispute to the workers' compensation court expires, without a party bringing that dispute to the workers' compensation court for adjudication.

(b) A petition that has had its acceptance status suspended is considered to be timely made for the purposes of the filing time limits provided by 39-71-717, MCA. While the acceptance status is suspended, the timelines for medical review and submission of documents do not begin to run. If the claim is deemed compensable, the department will notify the parties of the beginning of the 60-day review period, and that there are 14 days in which to submit medical records and additional information. If the claim is deemed not compensable, the status of the petition will be changed to dismissed.

(7) A petitioner disagreeing with the department's classification of a petition as either dismissed or returned may bring the dispute to the Workers' Compensation Court after following the mediation requirements provided by law.

AUTH: 39-71-203, MCA
IMP: 39-71-717, MCA

Rules 24.29.3108 through 24.29.3110 reserved

24.29.3111 PETITION FOR REOPENING (1) A party wishing to reopen medical benefits terminated by operation of law must submit a petition for reopening to the department on the form provided by the department. Petition forms are available online at the department's web site, or upon request from the department's Employment Relations Division, P.O. Box 8011, Helena, MT 59604-8011.

(2) A petition cannot be accepted unless all of the fields in the form, other than those identified as being "optional," have been filled out.

AUTH: 39-71-203, MCA
IMP: 39-71-717, MCA

Rules 24.29.3112 and 24.29.3113 reserved

24.29.3114 SUBMISSION OF MEDICAL RECORDS AND ADDITIONAL INFORMATION - EFFECT OF FAILURE TO SUBMIT MEDICAL RECORDS OR ADDITIONAL INFORMATION (1) Section 39-71-717(8), MCA, requires the department to issue the report of the medical director within 60 days of when the petition is considered filed. Due to this 60-day requirement, the parties have 14 days from the date the petition is considered filed in which to deliver to the department the medical records and any additional information the party wants considered in the medical review.

(a) The medical records and additional information must be delivered to the department in the manner and to an address as specified by the instructions.

(b) Any medical records or other information submitted by a party which have not previously been provided to the other party, must be sent to that other party at the same time the records or other information are delivered to the department.

(2) Medical records or additional information that are not timely delivered to the department will not be considered during the medical review. The medical review will be conducted considering only the materials that have been timely received by the department.

(3) When the petition is considered filed, the department will direct the insurer to deliver to the department the medical records contained in the insurer's claim file. In addition to sending the medical records in the claims file as required, the insurer is allowed to deliver to the department other medical records and any additional information the insurer wants considered in the medical review.

(4) Once the petition is considered filed, the worker is allowed to deliver to the department medical records and any additional information the worker wants considered in the medical review.

AUTH: 39-71-203, MCA
IMP: 39-71-717, MCA

Rules 24.29.3115 and 24.29.3116 reserved

24.29.3117 JOINT PETITION FOR REOPENING (1) If the worker and the insurer agree on the nature and duration of the medical benefits to be reopened, the worker and the insurer may file a joint petition for reopening. A joint petition for reopening must be made on the department's joint petition form. Joint petition forms are available from the department in the manner described in ARM 24.29.3111.

(2) All portions of the joint petition for reopening must be completed when it is delivered to the department, and the medical records and other information the parties believe are important to the issue of reopening must be provided at that time.

(3) Because the parties agree on the need for reopening medical benefits, the department's medical director will summarily review and approve the petition.

(4) In recognition that following the filing of the worker's petition, the parties may come to a voluntary agreement as to the nature and extent of medical benefits to be reopened, the department will treat the filing of a joint petition for reopening as a request for withdrawal of the worker's petition.

AUTH: 39-71-203, MCA
IMP: 39-71-717, MCA

Rules 24.29.3118 through 24.29.3120 reserved

24.29.3121 REVIEW BY MEDICAL DIRECTOR - CONSENT OF BOTH PARTIES (1) The worker and the insurer may consent to have a petition for reopening reviewed only by the department's medical director, and not by the medical review panel. An agreement to have the petition reviewed only by the department's medical director cannot be revoked. To be effective, the consent of each party to a review by only the medical director must be received by the department not later than the deadline for submission of medical records and additional information.

(2) The medical director shall apply the standard of review, burden of proof, and other evaluation factors described in ARM 24.29.3124 that apply to review by the medical review panel.

(3) Following the medical director's review, the medical director shall issue a report and make recommendations with respect to the reopening of medical benefits.

(4) A party disagreeing with the medical director's report and recommendations may bring the dispute to the Workers' Compensation Court after following the mediation requirements provided by law.

AUTH: 39-71-203, MCA
IMP: 39-71-717, MCA

Rules 24.29.3122 and 24.29.3123 reserved

24.29.3124 REVIEW BY MEDICAL REVIEW PANEL - REPORT AND RECOMMENDATIONS (1) Unless both the worker and the insurer agree to have a petition for reopening reviewed solely by the department's medical director, the petition will be reviewed by a three-member panel of physicians.

(2) The medical review panel may recommend that medical benefits be reopened only if:

(a) the worker's medical condition is a direct result of the compensable injury or occupational disease; and

(b) the worker needs additional medical benefits in order to:

(i) continue to work; or

(ii) return to work.

(3) Each member of the medical review panel shall prepare a report as to the panel member's evaluation of the medical records submitted for review and any additional information that has been submitted. The panel member must determine whether the evidence submitted demonstrates that further medical benefits meet the criteria of (2). The panel member's report must state the reason(s) and rationale for the recommendation.

(4) If a panel member concludes that additional medical benefits are necessary, the panel member shall identify the nature and extent of the medical benefits that should be provided. The analysis must include the reasons and rationale that explain:

(a) the nature or type of medical benefits recommended to be furnished, whether identified by specific procedure or by general description;

(b) the extent of the duration (whether by time or number of treatments) of the benefits expected to be needed; and

(c) whether and how the recommendations are consistent with the department's current utilization and treatment guidelines.

(5) Following the medical review panel members' individual reviews, the medical director shall issue a report and make recommendations on behalf of the panel with respect to the reopening of medical benefits that reflect the views of the majority of the panel members.

(6) A party disagreeing with the medical director's report and recommendations may bring the dispute to the Workers' Compensation Court after following the mediation requirements provided by law.

AUTH: 39-71-203, MCA
IMP: 39-71-717, MCA

Rules 24.29.3125 and 24.29.3126 reserved

24.29.3127 PERIODIC REVIEW OF CERTAIN REOPENED MEDICAL BENEFITS (1) The department's medical director shall biennially review claims where medical benefits have been reopened and the recommended duration of the reopening is more than two years, in order to determine whether the previous recommendations should be changed.

(2) The department shall request that the worker and the insurer deliver to the department medical records created since the prior medical review, as well as any additional information the party wants considered.

(a) The department's request shall specify a deadline by which those records and additional information must be received by the department.

(b) Any medical records or other information submitted by a party which have not previously been provided to the other party must be sent to that other party at the same time the records or other information are delivered to the department.

(3) The biennial review will be based on the materials previously submitted by the parties at the time the original petition for reopening was considered, and the records and information sent pursuant to (2). If a party does not timely send updated medical records or additional information, the medical director shall base the review on the materials available.

(4) The prior report and recommendation regarding medical benefits is presumed to be correct. A previous recommendation may be changed only if it is based on the updated medical records and information sent to the department.

(5) Following the medical director's review, if the medical director believes there is reason to change the prior recommendation, the medical director shall:

(a) in cases where the original review was made by a medical review panel, convene a new medical review panel to review the updated medical records and information; or

(b) in cases where the original review was made solely by the medical director, issue a report and make recommendations as provided by (6).

(6) Following completion of the periodic review, the medical director shall issue a report and make recommendations with respect to continuing the reopening of medical benefits.

(7) A party disagreeing with the medical director's report and recommendations may bring the dispute to the Workers' Compensation Court after following the mediation requirements provided by law.

AUTH: 39-71-203, MCA
IMP: 39-71-717, MCA